IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.7.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.17041 of 1997

The Superintending Engineer
Villupuram Ramasamy Padayatchiar
Electricity Distribution Circle
Villupuram

.. Petitioner

vs.

1.The Presiding Officer
labour Court
Cuddalore

2.K.Kasim

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records of the 1st respondent relating to the award dated 29.2.1996 made in Claim Petition No.04/93 on the file of the 1st respondent and quash the same as illegal and without jurisdiction.

For Petitioner : Ms.C.A.Shamila, for
Mr.V.Radhakrishnan

For Respondents : No Appearance, for R2.

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ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India seeking to issue a Writ of Cetiorari calling for the records of the 1st respondent relating to the award dated 29.2.1996 made in Claim Petition No.04/93 on the file of the 1st respondent and quash the same as illegal and without jurisdiction.

2.This writ petition has been filed by the Superintending Engineer, Tamil Nadu Electricity Board, Villupuram to quash the order of the 1st respondent Labour court, insofar as it relates to claim petition No.4/1993, by which the Labour Court awarded a sum of Rs.13,405.50 towards special contribution to the 2nd respondent herein.

3.The 2nd respondent herein was employed as a foreman with the Board and he retired from service on 31.1.1982 on superannuation. He received all the benefits under the Contributory Provident Fund Scheme (CPF). Thereafter he made a claim before the 1st respondent under Sec.33(c)(2) of the Industrial Disputes Act claiming a sum of Rs.13,495.50 together with interest at 6% per annum totalling a sum of Rs.22,403/- as special contribution payable to him under Regulation 37 of the Tamil Nadu Electricity Board Employees CPF Regulation.

4.The Board resisted the claim petition on the ground that the 2nd respondent suffered punishment while in service and he was reverted from the post of Wireman to the post of Assistant Wireman for a period of one year on account of disciplinary proceedings initiated against him. Therefore his service was not good, efficient and faithful for the purpose of grant of special contribution under Regulation 37. A batch of similar claim petitions numbering ten were filed before the Labour court and as the matter involved was the very same question of payment of special contribution, a common order was passed by the labour court on 29.2.1996, in which the 2nd respondent's claim petition was allowed as prayed for. Aggrieved by the same the Board has filed the above writ petition.

5.Heard the learned counsel for the writ petitioner. I have also perused the documents filed in support of their submissions.

6.The learned counsel for the Board submitted that the payment of the special contribution to Provident Fund comes within the purview of Regulation 37 referred above, according to which special contribution can be given only when the Board is satisfied that the service of the member has been good, efficient and faithful. In the absence of a good, efficient and faithful service which is a mandatory condition, no special contribution is payable to the member of service. As the 2nd respondent

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suffered punishment in a disciplinary proceeding initiated and was reverted to the post of Assistant Wireman for a period of one year from the post of Wireman, his service was not good, faithful and efficient and therefore he is ineligible to claim the amount under Regulation 37. The learned counsel further submitted that the issue involved in the present writ petition was covered by the decision of the First Bench of this court dated 18.12.2006 made in a batch of writ petitions in W.P.No.8193 etc./2003. A copy of the order dated 18.12.2006 was also produced before this court. The learned counsel further relied on an unreported judgment of this court dated 21.12.1999 made in a batch of writ petitions (Writ Petition No.12082 of 1991 etc.) to contend that the claim petition itself filed by the 2nd respondent before the Labour court under Sec.33(c)(2) is not maintainable.

7.I have considered the submissions carefully and I have perused the order passed by this court on 18.12.2006.

8.It is not in dispute that the 2nd respondent filed a claim petition in C.P.No.4/1993 under Sec.33(c)(2) of the Industrial Disputes Act, 1947 claiming a total sum of Rs.22,403/- towards special contribution as per regulation 37. It is also not in dispute that the 2nd respondent retired as foreman on 31.1.1982 after having rendered a service of 38 years. The main objection by the Board before the 1st respondent is that the 2nd respondent is not entitled to receive the special contribution as his service was not good, faithful and efficient which is a mandatory condition under regulation 37. To arrive at this conclusion the Board relied on the punishment suffered by the 2nd respondent by which he was reverted for one year from the post of Wireman to Assistant Wireman. The labour court after going through the Regulation 37, held that no opportunity was given to the 2nd respondent by the Board by issuing a show cause notice to show cause why he should not be granted the special contribution under Regulation 37 in view of the punishment suffered by him. Therefore the labour court held that the 2nd respondent along with other nine claimants are entitled to receive the speial contribution under Regulation 37.

9.Regulation 37 deals with the special contribution to Provident Fund and according to which a member of the Board is entitled to special contribution calculated in the manner specified in sub-regulation (2) or (3) if the Board is satisfied that the service of the member has been good, efficient and faithful. It does not explain what is a good, efficient and faithful service. Therefore a wide discretion is given to the Board in this regard. But this discretion could be exercised by the Board only at the time when the member leaves the Board and at the time of paying the terminal benefits. Therefore at the time of settling the terminal benefits, the Board is duty bound to pay the member the special contribution if he/she comes within Regulation 37. If the Board feels that a person is not eligible to receive the said amount as his/her service has not been good, efficient and faithful, the principles of natural justice requires that a notice is to be given to such persons to

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show cause why special contribution should not be given to him. Only then, the member will come to know that whether he/she comes under Regulation 37 or not. Further denying a member the special contribution as contemplated under Regulation 37 will no doubt result in civil consequences and therefore as rightly held by the labour court the Board should have issued notice to the 2nd respondent if it had decided to deny the special contribution to him. At this juncture, it is not for the Board to contend that his service has not been good, faithful and efficient when the 2nd respondent had no opportunity to defend him in the light of the above accusation. Therefore I do not find any infirmity nor illegality in the order of the labour court allowing the claim petition filed by the 2nd respondent.

10.Insofar as the judgment of the First Bench dated 18.12.2006 is concerned, that was the case of the workmen who are all governed by the Pension Rules evolved by the Board, who claimed the special contribution under the CPF scheme stating that they were eligible for the scheme. Therefore the First Bench held that the workmen of the Board is entitled to double benefits and the scheme are mutually exclusive. Only in that context the First Bench quashed the orders of the labour court granting the benefits to the workmen.

11.The facts in the present case are entirely different and the 2nd respondent is not covered under the pension scheme evolved by the scheme. Therefore the reference to the judgment would be of no avail to the petitioner.

12.The other unreported judgment dated 21.12.1999 referred to by the learned counsel for the petitioner was also mentioned in the judgment of the Division Bench dated 18.12.2006. A perusal of the judgment dated 21.12.1999 would make it very clear that it is also a case wherein the employees who were paid pension as applicable to pensionable employees made claims for the special contribution under Sec.33(c)((2) of the Industrial Disputes Act. Only in that context, the learned Judge of this court held that the question whether they would be entitled to special contribution or whether the special contribution is not in lieu of pension, are all matters involving serious disputes which are to be investigated by the labour court in a proper reference and the same cannot be adjudicated under Sec.33(c)(2), exercising the limited powers.

13.In the present case, it is not at all in dispute that the 2nd respondent retired as a foreman on 31.1.1982 as a non-pensionable employee. Therefore Regulation 37 definitely would apply to the case of the 2nd respondent herein, unlike the employees who had filed claim petition in the two judgments referred to by the learned counsel for the petitioner, which have been referred to above. Therefore the facts of the present case are totally different in sum and substance and the writ petitioner cannot rely on them to assail the award of the 1st respondent.

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14.In the result, there is no merit in the writ petition and the same is dismissed. No costs.

sks

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Presiding Officer,
Labour Court, Cuddalore.

2. The Superintending Engineer
Villupuram Ramasamy Padayatchiar
Electricity Distribution Circle
Villupuram.

NTK(CO)
dcp/7.8

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